

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY**

**SUPERIOR COURT**

PEERLESS INSURANCE COMPANY, as  
Subrogee of Rhode Island Cardiology  
Center, LLC

VS

CA NO P13-

BRADFORD WHITE CORPORATION

**COMPLAINT**

NOW COMES the Plaintiff, PEERLESS INSURANCE COMPANY, as subrogee of RHODE ISLAND CARDIOLOGY CENTER, LLC (hereinafter "PEERLESS INSURANCE") by and through its attorneys, MARK B. MORSE, Law Office of Mark B. Morse, and for its Complaint against Defendant BRADFORD WHITE CORPORATION, a Tennessee corporation (hereinafter "BRADFORD WHITE"), states as follows:

**ALLEGATIONS APPLICABLE TO ALL COUNTS**

1. On or about September 13, 2010, and at all times relevant, RHODE ISLAND CARDIOLOGY CENTER, LLC (hereinafter "RHODE ISLAND CARDIOLOGY") operated its business at the building located at 450 Veteran's Memorial Parkway, East Providence, Rhode Island (hereinafter "the property").

2. At all times relevant, Plaintiff, PEERLESS INSURANCE, was in the business of, among other things, providing property insurance and was authorized to do business in and issue policies of property insurance within the state of Rhode Island.

3. At all times relevant, Plaintiff insured the property under property insurance Policy No. 2373456.

4. At all times relevant, Defendant, BRADFORD WHITE, was a Tennessee corporation in with its principal place of business at 725 Talamore Drive, Amber, Pennsylvania.

5. At all times relevant, BRADFORD WHITE, was in the business of, among other things, designing, manufacturing, distributing and/or selling residential and commercial water heaters.

6. Prior to September 13, 2010, BRADFORD WHITE designed, manufactured, distributed and/or sold a certain water heater which manufactured on October 15, 2004 and then installed at the property approximately 5 to 6 years before September 13, 2010.

7. On or about September 13, 2010, a leak occurred in the water heater at the property resulting in significant property damage to the premises and contains therein as well as significant other losses sustained by RHODE ISLAND CARDIOLOGY.

8. Following the incident, RHODE ISLAND CARDIOLOGY submitted a claim to PEERLESSLESS, their property insurance carrier, for said damages.

9. PEERLESSLESS subsequently made payments to RHODE ISLAND CARDIOLOGY for damages to the premises and contents, and by operation of law and by virtue of said payments, Plaintiff is subrogated to the rights of its insured the RHODE ISLAND CARDIOLOGY with respect to said payments.

#### **COUNT I – NEGLIGENCE**

10. Plaintiff realleges and reincorporates Paragraphs 1 through 9 of the Common Allegations as though set forth fully herein.

11. On or before September 13, 2010, and at all times relevant, Defendant, BRADFORD WHITE, owed RHODE ISLAND CARDIOLOGY, and their subrogee, Plaintiff, the duty to exercise reasonable care and caution in the design, manufacture, distribution and/or sale of the subject water heater so as to avoid harming RHODE ISLAND CARDIOLOGY's property.

12. On or before September 13, 2010, BRADFORD WHITE breached the aforementioned duty in one or more of the following respects:

- a. Negligently and carelessly designed, manufactured, distributed and/or sold the subject water heater in a condition which caused it to leak;
- b. Negligently and carelessly designed, manufactured, distributed and/or sold the subject water heater with inadequate installation of glass lining to prohibit corrosion, causing it to leak;
- c. Negligently and carelessly designed, manufactured, distributed and/or sold the subject water heater without proper warnings as to the advisement of annual inspections of anode rods; and
- d. Negligently and carelessly designed, manufactured, distributed and/or sold the subject water heater with an improper or inadequate anode rod so as to prevent corrosion, causing the heater to leak.

13. On September 13, 2010, as a direct and proximate result of one or more of the foregoing acts or omissions, a leak occurred in and around the water heater at the property resulting in damages in excess of \$300,000.

WHEREFORE, Plaintiff, PEERLESS INSURANCE COMPANY, as subrogee of RHODE ISLAND CARDIOLOGY, LLP respectfully requests judgment in its favor and against, Defendant, BRADFORD WHITE CORPORATION, for costs and for any further relief deemed appropriate.

**COUNT II – PRODUCT LIABILITY**

14. Plaintiff realleges and reincorporates Paragraphs 1 through 13 as though set forth fully herein.

15. On or before September 13, 2010, and at the time the subject water heater left the control of BRADFORD WHITE, the water heater was defective and unreasonably dangerous in that it was:

- a. Designed, manufactured, distributed and/or sold in a condition which caused it to leak;
- b. Designed, manufactured, distributed and/or sold with inadequate installation of glass lining to prohibit corrosion, causing the it to leak;
- c. Designed, manufactured, distributed, and/or sold without proper warnings as to the advisement of annual inspections of anode rods; and
- d. Designed, manufactured, distributed and/or sold with an improper or inadequate anode rode so as to prevent corrosion, causing it to leak.

16. On September 13, 2010, as a direct and proximate result of one or more of the foregoing defective and unreasonably dangerous conditions, a leak occurred in and around the water heater at the property resulting in damages in excess of \$300,000.

**COUNT III - BREACH OF IMPLIED WARRANTY**

17. Plaintiff realleges and reincorporates Paragraphs 1 through 16 as though set forth fully herein.

18. In manufacturing the water heater at issue, BRADFORD WHITE had a duty to see that the water heater was fit for the particular purpose for which it was intended, to provide water heating services at the property.


19. BRADFORD WHITE holds itself out as a seller, maintainer and manufacturer with specialized skill and knowledge of water heaters like the water heater at issue, and RHODE

ISLAND CARDIOLOGY relied upon BRADFORD WHITE to provide a properly manufactured water heater.

20. BRADFORD WHITE breached its implied warranty of fitness for a particular purpose by failing to provide a hot water heater free from defects.

WHEREFORE, Plaintiff, PEERLESS INSURANCE COMPANY, as subrogee of RHODE ISLAND CARDIOLOGY, LLP, respectfully requests judgment in its favor and against, Defendant, BRADFORD WHITE CORPORATION, for costs and for any further relief deemed appropriate.

PLAINTIFF  
By its Attorneys  
Law Office of Mark B. Morse



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March 26, 2013  
Certified Mail No:  
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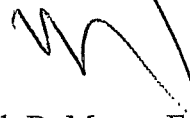
Bradford White Corporation  
725 Talamore Drive  
Amber, PA 19002

Re: Peerless Insurance Company  
Vs. Bradford White Corp.  
CA No: P13- *1436*

Dear Sir or Madame:

I am herewith enclosing a copy of a Summons and Complaint being served upon you pursuant to Rule 4(f) of the Rhode Island Rules of Civil Procedure. Respond as you see fit.

Very truly yours,

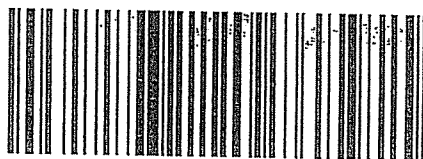


Mark B. Morse, Esq.

MBM/jm  
Enclosure

Law Office of  
**MARK B. MORSE**  
Attorneys and Counselors at Law  
420 Angell Street  
Providence, Rhode Island 02906

VERIFIED MAIL



7010 1060 0001 5636 6444

Bradford White Corporation  
725 Talamore Drive  
Ambler, PA 19002

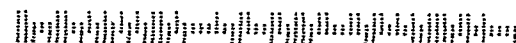
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STATE OF RHODE ISLAND



AND PROVIDENCE PLANTATIONS

**SUPERIOR COURT**

**X** ***Providence/Bristol County***

Licht Judicial Complex  
250 Benefit Street  
Providence, Rhode Island 02903

       ***Kent County***

Kent County Courthouse  
222 Quaker Lane  
Warwick, Rhode Island 02886

       ***Newport County***

Murray Judicial Complex  
45 Washington Square  
Newport, Rhode Island 02840

       ***Washington County***

McGrath Judicial Complex  
4800 Tower Hill Road  
Wakefield, Rhode Island 02879

CIVIL ACTION, FILE NO. P13-1436

Peerless Insurance Company

Plaintiff

Bradford White Corp.

Defendant

**Summons**

*To the above-named Defendant:*

The above-named Plaintiff has brought an action against you in said Superior Court in the county indicated above. You are hereby summoned and required to serve upon Mark B. Morse  
Plaintiff's attorney, whose address is 420 Angell Street, Providence, RI 02906

an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.

As provided in Rule 13(a), unless the relief demanded in the complaint is for damage arising out of your ownership, maintenance, operation, or control of a motor vehicle, or unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

CLERK

Dated: 3-27-13

(Seal of the Superior Court)